

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARTIN JOHN ST. LAWRENCE,

Defendant-Appellant.

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UNPUBLISHED

August 16, 2007

No. 268639

Charlevoix Circuit Court

LC No. 05-009110-FH

Before: Whitbeck, C.J., and Talbot and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction for entering without breaking with intent to commit a larceny, MCL 750.111. Defendant was sentenced to 18 months' probation, and ordered to abide by any conditions imposed for substance abuse treatment. We affirm.

Defendant was vacationing at Boyne Mountain Resort and stayed in the Resort's condominium village, located approximately a quarter mile from the main lodge. In the immediate 24-hours preceding the incidents leading to defendant's arrest, he consumed substantial amounts of alcohol and ingested Xanax in excess of the prescribed dosage. Defendant was aware that consuming alcohol while taking his prescribed medication, Xanax, was contraindicated.

During the evening, defendant became insistent upon leaving the condominiums to go to the main lodge. When his friends and family refused to accompany him, defendant drove to the lodge, and walked around the side of the building to the pool area. Defendant testified that maintenance workers were in the process of "closing down," but gave him permission to use the pool and Jacuzzi. When he finished swimming, defendant entered the lodge through an unlocked door in the pool area, purportedly in search of a bathroom.

Charlevoix County Sheriff's Deputy George Lasater arrived at the lodge and observed defendant's vehicle parked at the base of the building. Inside defendant's car was a trash can with the words "broken glass" written on it, holding four bottles of liquor, some beer bottles, shot glasses, and broken glass. When asked where he acquired the bottles of liquor, defendant responded that he procured them from inside the lodge. Bottles corresponding to those found in defendant's vehicle, were reported missing from the lodge's Snowflake Bar.

Defendant asserts the trial court erred by denying his motion for judgment notwithstanding the verdict (JNOV) or a directed verdict of acquittal. ““When reviewing a trial court’s decision on a motion for a directed verdict, this Court reviews the record de novo to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt.”” *People v Werner*, 254 Mich App 528, 530; 659 NW2d 688 (2002), quoting *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001).

Defendant was convicted of entering without breaking with intent to commit a larceny in violation of MCL 750.111. Defendant’s assertion of error rests on the mistaken premise that he could not be convicted of “entering without breaking” because he received permission from employees to enter the lodge. Contrary to defendant’s assertion, violation of MCL 750.111 does not require that an entry occur without permission.

Specifically, MCL 750.111 provides:

Any person who, without breaking, shall enter any dwelling, house, tent, hotel, office, store, shop, warehouse, barn, granary, factory or other building, boat, ship, railroad car or structure used or kept for public or private use, or any private apartment therein, with intent to commit a felony or any larceny therein, shall be guilty of a felony punishable by imprisonment in the state prison not more than 5 years, or fined not more than \$2,500.

Accordingly, the only statutory requirement is that entry of the building occurs in conjunction with intent to commit a felony or larceny in the structure. Thus, even if defendant entered the building with permission, based on the plain statutory language he would be guilty of violating MCL 750.111 if entry occurred with intent to commit a felony or larceny. *People v Williams*, 475 Mich 245, 250; 716 NW2d 208 (2006).

Defendant next contends the trial court erred by refusing to define the term “building” following the jury’s request for clarification. Because defendant did not properly preserve this issue, we review for plain error affecting substantial rights. *People v Pipes*, 475 Mich 267, 274; 715 NW2d 290 (2006).

During deliberations, the jury returned to the courtroom with several questions for the court, including a request to define the term “building.” Defendant contends that the jury’s question concerned a material element of the case and, therefore, it was error for the trial court to fail to address it.

A trial court need not define words with ordinary meanings for a jury. “When a word is not defined by statute, this Court presumes that the word is subject to ordinary comprehension and there will be no error warranting reversal as a result of a trial court’s failure to define a term that is generally familiar to lay persons and is susceptible of ordinary comprehension.” *People v Martin*, 271 Mich App 280, 352; 721 NW2d 815 (2006). Defendant does not take issue with the instruction provided, merely the failure of the trial court to immediately provide a requested definition of the term “building.” Contrary to defendant’s assertion, the trial court did not deny

the jury's request for clarification. Rather, the trial court directed the jury to continue deliberations while the trial court and counsel discussed how to address the request. Accordingly, the trial court did not err in failing to provide a definition of the term, particularly given the jury's demonstrated ability to resolve the issue without the necessity of further instruction.

Defendant implies that his conviction was in error because the jury misinterpreted the requirements of the statute. Defendant contends that there was no evidence that he intended to commit a larceny when he entered the lodge and that any such intent formed after entry into an interior space within the lodge is not sufficient to prove violation of the statute. This argument is specious. MCL 750.111 allows for a conviction based on entering a "building" with intent to commit a larceny. Regardless of the jury's initial confusion concerning the meaning of the term "building," there is nothing to suggest that defendant's conviction was improper given the evidence that defendant entered the main lodge of the resort late at night, even though he was not a guest at that location, and left with several bottles of liquor. Despite the absence of "direct evidence showing intent antedating the entering, the facts and circumstances were sufficient to infer intent." *People v Willis*, 26 Mich App 366, 367; 182 NW2d 608 (1971). Further, it is disingenuous to suggest that defendant could not form the requisite intent while inside the structure. Notably, the statute itself contemplates that separate areas within a structure, such as "any private apartment therein," are included in the definition of the term "building." MCL 750.111. This Court has previously determined that for a structure to be deemed a "building" for purposes of this statutory provision, "it must be used as a habitation or for some purpose of trade, manufacture or ornament." *People v Matusik*, 63 Mich App 347, 350 n 2; 234 NW2d 517 (1975) (citation omitted). Defendant does not dispute that the bar area of the lodge constituted a separate area, within the main structure, that was used for "trade," placing it within the definitional requirements of the term "building." As such, it is irrelevant whether defendant formed the intent to commit a larceny upon crossing the outer threshold of the lodge or the internal threshold of a distinct structure or area within the building. This is consistent with this Court's previous determination in *People v Toole*, 227 Mich App 656, 659; 576 NW2d 441 (1998), which held "that a breaking of an inner portion of a building constitutes the requisite element for burglary." In *Toole*, the defendant had permission to enter the main building but exceeded the authority conveyed when he forcefully entered a locked storage room within the building. "[B]ecause defendant was not lawfully permitted to enter the storage room, his opening the door from the classroom to the storage room was sufficient to satisfy the element of breaking." *Id.* Similarly, in the circumstances of this case, defendant may have had permission to enter the main building, but exceeded any authorized presence when he entered into restricted areas and removed items without permission.

Finally, defendant asserts that the trial court erred in denying his motion for JNOV or directed verdict based on his inability to form the specific intent required to commit larceny due to his use of Xanax. In support of his argument, defendant cites MCL 768.37, which provides in relevant part:

(1) Except as provided in subsection (2), it is not a defense to any crime that the defendant was, at that time, under the influence of or impaired by a voluntarily and knowingly consumed alcoholic liquor, drug, including a

controlled substance, other substance or compound, or combination of alcoholic liquor, drug, or other substance or compound.

(2) It is an affirmative defense to a specific intent crime, for which the defendant has the burden of proof by a preponderance of the evidence, that he or she voluntarily consumed a legally obtained and *properly used* medication or other substance and did not know and reasonably should not have known that he or she would become intoxicated or impaired. [Emphasis added].

Although defendant argued that he overdosed on Xanax by mistake, the statute does not distinguish between individuals who purposefully misuse their medication from those who mistakenly ingest an improper dosage. Based on his own testimony, defendant began using Xanax a week before the incident, allowing sufficient time to become knowledgeable about the effects of the drug. Defendant admitted that he had taken a double dose of his medication on more than one occasion during the vacation and that he continued to consume alcohol after taking the additional doses. Defendant was aware that combining alcohol with his prescription medication was contraindicated. The statute is explicit in stating that knowingly combining alcohol and a drug is not a defense to a crime. MCL 768.37(1). Further, the fact that the drug was prescribed does not afford a defense, as defendant admitted to improperly using the drug by ingesting more than the prescribed dosage. MCL 768.37(2).

Affirmed.

/s/ William C. Whitbeck  
/s/ Michael J. Talbot  
/s/ Brian K. Zahra